

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re:

*

ALGITS INCORPORATED

*

Case No. 21-13888-DER

Debtor.

*

(Chapter 11)

* * * * *

OPPOSITION TO SETOFF MOTION

Snowden Investors LLC ("Snowden"), the Debtor's landlord, by and through its undersigned counsel, hereby opposes the *Motion for Approval of Consent Agreement Pursuant to 11 U.S.C. §362(d), to Permit Setoff and to Authorize Carve-Out for the Administrative Fees and Expenses of the Subchapter V Trustee* [ECF 105] (the "Setoff Motion") filed by EagleBank (the "Bank"), and states as follows.

1. Snowden stands to be the largest unsecured creditor by far, with a claim in excess of \$1,000,000 as result of the Debtor's pre-petition and post-petition defaults under a commercial lease, and the forthcoming rejection of the lease with the Debtor having now ceased operations.

2. As detailed in the Setoff Motion, the Bank asserts that it was perfected in all assets of the Debtor as of the Petition Date (June 11, 2021), and that conclusion serves as the basis for relief sought by the Bank in the motion.

3. However, the Debtor's filed Schedule A/B provides that \$200,000 (or more than 90% of the Debtor's scheduled assets) was in a deposit account of Howard Bank as of June 11, 2021 (the "Petition Date").

4. Absent a control agreement, the Bank's security interest would have not been perfected against the Debtor's funds at Howard Bank as of the Petition Date, unless the funds were

identifiable proceeds of the Bank's collateral. *See* Sections 9-312 and 9-315 of the Commercial Law Article of the Maryland Code.

5. The Debtor was not operating for much, if any, of the year prior to the Petition Date.

6. Thus, the funds held by the Debtor at Howard Bank as of the Petition Date do not appear to be operational revenues that would be identifiable proceeds of the Bank's collateral.

7. Rather, the funds at Howard Bank appear to be the proceeds of a loan from the Maryland Small Business Development Financing Authority ("MSBDFA"), which also happens to be scheduled as unsecured creditor in the amount of \$200,000 – the exact same amount scheduled as the balance of the deposit account at Howard Bank. *See* Schedules A/B and EF [ECF 24-1 and ECF 20-3].¹

8. Accordingly, there is, at a minimum, a dispute as to the Bank's secured status in some, or all, of the funds which are subject to the Setoff Motion.

9. In response to the Bank's allegations in the Setoff Motion, Snowden denies all allegations as to the Bank maintaining perfected security interest in the Debtor's deposit accounts as of, or since, the Petition Date; specifically, paragraphs 7, 16, 26, 27, 30, and 32 of the Setoff Motion are denied by Snowden.

10. To the extent that the Bank does not maintain a perfected security interest in the Debtor's assets, the Bank is not entitled to a right of setoff of those amounts, leaving those assets subject to liquidation for unsecured creditors, such as Snowden.

WHEREFORE, Snowden respectfully requests that this Court deny the Setoff Motion

¹ There is some confusion here as the Debtor's asset sale motion states that the MSBDFA loan has been satisfied (*See* ECF 87-2, p. 2). Perhaps it was forgiven.

unless the Bank's allegations of a perfected security interest is established; and grant such other and further relief as this Court deems fair and just.

Date: November 1, 2021

Respectfully Submitted,

/s/ Joseph M. Selba

Joseph M. Selba, Bar No. 29181

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Counsel for Snowden Investors LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of November 2021, a copy of the foregoing ***Opposition to Setoff Motion*** was served electronically, via this Court's CM/ECF system, on the following:

- Hugh M. (UST) Bernstein, Esq., hugh.m.bernstein@usdoj.gov, *Office of United States Trustee*
- Robert L. Kline, Esq., klinelawgroupllc@gmail.com, *Debtor's Counsel*
- Craig Palik, Esq., cpalik@mhlawyers.com, *Counsel for Eagle Bank*

/s/ Joseph M. Selba

Joseph M. Selba